Airport authority, nonpartisan elections

Number: INFORMAL

Date: June 20, 2012

Mr. Mark Herron
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Dear Mr. Herron:

As legal counsel for the Honorable Paul A. Stamoulis, Supervisor of Elections for Charlotte County, you have requested this office's assistance in determining whether a candidate for election to the Charlotte County Airport Authority must run in a partisan or nonpartisan race. The following informal comments are provided in an effort to assist you in a timely manner as your letter indicates that the ballot for the August 14th primary election must be finalized by Monday, June 25, 2012, to enable the Supervisor to have the ballots printed and mailed to military and overseas voters.

The Charlotte County Airport Authority is an independent special district created by the Legislature in 1998[1] and operating pursuant to Chapter 189, Florida Statutes.[2] As provided in Section 4, Chapter 2011-263, Laws of Florida:

"The authority shall be composed of five members, one from each Charlotte County commission district elected as prescribed in this section. At each general election, the members of the authority shall be elected for a term of 4 years, and shall take office immediately upon election. Election of members of the authority shall be as prescribed by the general election laws of Florida."

The Charlotte County Airport Authority is an independent special district located entirely in a single county and, pursuant to section 189.405, Florida Statutes, prescribing elections procedures for such districts, may provide for the conduct of district elections by the supervisor of elections for that county.[3] Pursuant to section 189.405(2)(c), Florida Statutes:

"A candidate for a position on a governing board of a single-county special district that has its elections conducted by the supervisor of elections shall qualify for the office with the county supervisor of elections in whose jurisdiction the district is located. *Elections for governing board members elected by registered electors shall be nonpartisan, except when partisan elections are specified by a district's charter*. Candidates shall qualify as directed by chapter 99. The qualifying fee shall be remitted to the general revenue fund of the qualifying officer to help defray the cost of the election." (e.s.)

Thus, Chapter 189, Florida Statutes, which provides general election requirements and procedures for special districts, specifically provides that elections for positions on the governing board of a special district such as the Charlotte County Airport Authority shall be nonpartisan,

except when partisan elections are specified by the district's charter. Nothing in Chapters 98-508, 2004-405, or 2011-263, Laws of Florida, requires or authorizes partisan elections for the Authority.

The general rule is that where language is unambiguous, the clearly expressed intent must be given effect, and there is no room for construction as the statute must be given its plain and obvious meaning.[4] Where a statute's language is plain, definite in meaning and without ambiguity, it fixes the legislative intention and interpretation and construction are not needed.[5]

A review of the legislative history surrounding the statutory language prescribing general requirements for special district elections contained in section 189.405, Florida Statutes, suggests that the Legislature intended to revise numerous sections of the Special District Accountability Act of 1989 including those provisions relating to special district elections.[6] Amendments to section 189.405 deleted references to specific sections of the Florida Election Code, but retained the requirement for general consistency with the entire code.[7] The amendments made in 1997 also provided specific qualifications for candidates for the governing board of single-county special districts.[8]

The enabling legislation for the Charlotte County Airport Authority requires that elections of members of the authority "shall be as prescribed by the general election laws of Florida."[9] Chapter 189, Florida Statutes, also requires compliance with Florida's elections code and incorporates provisions from the code into this chapter making general provision for special districts.[10] Further, section 189.404(2)(b), Florida Statutes, prohibits any special act or general law of local application which would "[e]xempt independent special district elections from the appropriate requirements in s. 189.405[.]" Based on the language of the enabling acts for the airport authority and the provisions of Chapter 189, Florida Statutes, it does not appear that the Legislature intended to impose a partisan election requirement on single-county special districts.

In sum, section 189.405(2)(c), Florida Statutes, states that "[e]lections for governing board members elected by registered electors shall be nonpartisan, except when partisan elections are specified by a district's charter." No charter provision for the Charlotte County Airport Authority specifies a partisan election for governing board members, rather, the enabling legislation provides that such elections "shall be as prescribed by the general election laws of Florida." Chapter 189, Florida Statutes, requires general consistency with the entire Florida Election Code and provides specific qualifications for candidates for the governing board of a single-county special district. Thus, it would appear that the provisions of section 189.405(2)(c), Florida Statutes, would control and require a candidate for election to the governing board of the Charlotte County Airport Authority to conduct a nonpartisan race for that office.

This informal advisory opinion is provided to you by the Department of Legal Affairs in an effort to be of assistance. The conclusions expressed herein are those of the writer and do not constitute a formal opinion of the Attorney General.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] Enabling legislation for the Charlotte County Airport Authority may be found in Ch. 98-508, Laws of Fla., as amended by Chs. 2004-405 and 2011-263, Laws of Fla.

[2] *See* s. 3, Ch. 2011-263, Laws of Fla., amending Ch. 98-508, Laws of Fla.

[3] Section 189.405(2)(a), Fla. Stat.

[4] *See, e.g., M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000); *Fine v. Moran*, 77 So. 533, 536 (Fla. 1917).

[5] *See, e.g., Holly v. Auld*, 450 So. 2d 217 (Fla. 1984); *Osborne v. Simpson*, 114 So. 543, 544 (Fla. 1927).

[6] *See* Final Bill Research & Economic Impact Statement for Ch. 97-255, Laws of Fla., Florida House of Representatives Committee on Community Affairs, dated July 24, 1997. And for the proposition that the staff analysis of legislation should be accorded significant respect in determining legislative intent, *see State, Dept. of Environmental Regulation v. SCM Glidco Organics Corporation*, 606 So. 2d 722 (Fla. 1st DCA 1992); *Asphalt Pavers, Inc. v. Department of Revenue*, 584 So. 2d 55 (Fla. 1st DCA 1991); *Badaraco v. Suncoast Towers V Associates*, 676 So. 2d 502 (Fla. 3d DCA 1996); *State v. Pinder*, 678 So. 2d 410 (Fla. 4th DCA 1996); Ops. Att'y Gen. Fla. 99-61 (1999) (staff analysis of legislation should be accorded significant respect in determining legislative intent); 99-59 (1999); and 97-39 (1997).

[7] *See* Senate Staff Analysis and Economic Impact Statement on SB 1288, dated March 14, 1997 (this was a companion bill to HB 1683 which became Ch. 97-255, Laws of Fla.) *and see, e.g.,* s. 189.405 (1), (2)(a), and (3)(a), Fla. Stat. (all of which refer to "the Florida Election Code, chapters 97-106") and s. 189.402(2)(d), Fla. Stat. (expressing the Legislature's intent that special district elections "[m]ove toward greater uniformity").

[8] *Id.* Senate Staff Analysis and s. 189.405(2)(c), Fla. Stat.

[9] Section 4, Ch. 98-508, Laws of Fla., as amended.

[10] *Supra* n.7.